



FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OCT 20 2003

Dale A. Cooter, Esq.
Cooter, Mangold, Tompert & Wayson, P.L.L.C.
5301 Wisconsin Ave, NW
Suite 500
Washington, D.C. 20015

RE: MURs 5164 and [REDACTED]
Reform Party of the United States of America and Mark Lauterman, as Treasurer

Dear Mr. Cooter:

On October 7, 2003, the Federal Election Commission found reason to believe in MUR 5164 and MUR 5182 that your clients, the Reform Party of the United States of America and Mark Lauterman, as Treasurer, violated 26 U.S.C. §§ 9008(c) and 9012(c)(2), provisions of the Presidential Election Campaign Fund Act, and 11 C.F.R. §§ 9008.7(a) and 9012.3(b), Commission regulations. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be

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demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Daniel E. Pollner, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Ellen L. Weintraub
Chair

Enclosures: Factual and Legal Analysis

cc: Lou Anne Jones, Chairman
Reform Party of the United States of America

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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Reform Party of the United States of America MURs 5164 and 5182
and Mark Lauterman, as Treasurer

I. INTRODUCTION

The Reform Party 2000 Convention Committee ("Committee") was established as a "convention committee" of the Reform Party of the United States of America ("RPUSA") pursuant to the Presidential Election Campaign Fund Act ("Fund Act"), which provides public financing for presidential election campaigns and nominating conventions.¹ To qualify for public funding for its presidential nominating convention, a party must establish a "convention committee" to be "responsible for conducting the day to day arrangements and operations of that party's presidential nominating convention." 11 C.F.R. § 9008.3(a)(2). Pursuant to the Fund Act, the Committee received \$2,522,690 in federal funding to pay for certain allowable convention expenses.

The Commission conducted the statutorily mandated audit of the Committee, which resulted in a final audit report ("FAR") that was approved by the Commission on September 26, 2002.² The FAR included a finding that approximately \$338,000 in expenditures by the Committee were not legitimate convention expenses under the Fund Act and, therefore, could not be paid with public money. Consequently, the Commission issued a repayment determination, which requires the RPUSA to repay to the U.S. Treasury the \$333,558 that was improperly used. The single largest component of the

¹ See 26 U.S.C. § 9001, *et seq.* The Committee registered with the Commission as a national committee of the RPUSA by filing a statement of organization on October 9, 1999.

² See Report of the Audit Division on the Reform Party 2000 Convention Committee (September 26, 2002).

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repayment determination was a \$295,623 payment to the Performance Group (“TPG”) for consulting services.³ The Commission determined that the Committee failed to provide documentation, as required by 11 C.F.R. § 9008.10, to show what services were provided by TPG and that those services were related to the convention. The documentation that was provided indicated that at least some of the services performed by TPG were related to an emergency convention held in Las Vegas in March 2000, which was not the Party’s official nominating convention.

III. II. THE LAW

Under the Fund Act, a political party that satisfies certain criteria is eligible to receive public financing for its presidential nominating convention. 26 U.S.C. § 9008. To qualify for public financing for its presidential nominating convention, a political party must “establish a convention committee which shall be responsible for conducting the day to day arrangements and operations of that party’s presidential nominating convention.” 11 C.F.R. § 9008.3(a)(2). The convention committee shall receive all public funds to which the party is entitled for its presidential nominating convention. *Id.*

A committee that receives public funds for its presidential nominating convention may use those funds only for the following purposes: (1) to defray convention expenses incurred by or on behalf of the national committee receiving the public funds; (2) to repay the principal and interest on loans used to defray convention expenses; and (3) to restore funds (including advances from the national committee to the convention committee), other than contributions to the committee for the purpose of defraying convention

³ The remainder of the repayment amount was comprised of several smaller expenditures that, for one reason or another, were determined by the Commission to have been improper.

expenses, where such funds were used to defray convention expenses.

26 U.S.C. § 9008(c); 11 C.F.R. § 9008.7(a). Convention expenses include all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities. 11 C.F.R. § 9008.7(a)(4).

It is unlawful for the national committee of a major or minor party which receives any payment of public money for its presidential nominating convention to use or authorize the use of such funds for impermissible purposes as set forth at 26 U.S.C. § 9008(c). 26 U.S.C. § 9012(c)(2); 11 C.F.R. § 9012.3(b). The Commission has the power to initiate, defend or appeal any civil action in the name of the Commission to enforce the provisions of the Fund Act. 2 U.S.C. § 437d(a)(6). Any person who believes that a violation of the Fund Act has occurred, may file a complaint with the Commission. 2 U.S.C. § 437g(a)(1).

III. ANALYSIS

MURs 5164 and 5182 arise from nearly identical complaints alleging, *inter alia*, that the payment to TPG was impermissible because TPG is not a recognized stage design or public relations firm, was established just weeks before the expenditures were made, and the principals of TPG "have been identified to be professional lobbyists, not convention consultants."⁴ The Committee filed identical responses in MURs 5164 and 5182, in which it agrees that the TPG payment was not a permissible convention expense.

⁴ MUR 5164 was filed on January 8, 2001, by Donna Donovan, purporting to be the Chairman of the Reform Party of Connecticut. MUR 5182 was filed on March 19, 2001, by Victor Good, who purports to be the Chairman of the Colorado Reform Party. The complaints in MURs 5164 and 5182 contain nearly identical wording and format.

The Committee explains that Mr. Moan's predecessor, Ronn Young, authorized the TPG payment, and that, after Mr. Moan replaced Mr. Young as Chairman, the Committee filed a lawsuit against TPG in an attempt to recover this money.

As stated above, the payment to TPG was identified in the FAR as an improper convention expense and was included in the Commission's repayment determination. Specifically, the Commission determined that the Committee failed to provide documentation to show what services were provided by TPG and that those services were related to the convention. Moreover, the documentation that was provided indicated that at least some of the services performed by TPG were related to an emergency convention held in Las Vegas in March 2000, which was not the Party's official nominating convention. Significantly, the Committee agrees that the TPG payment was not a permissible convention expense and, in fact, filed a lawsuit against TPG to recover those funds.

The RPUSA is responsible for any violations of the Fund Act committed by its convention committee. The mere fact that the payments to TPG were made by the Committee and were not made directly by the RPUSA (i.e., the "national committee") does not relieve the RPUSA from liability for the improper payments for several reasons.

First, as set forth above, pursuant to 11 C.F.R. § 9008.3(a)(2), "all expenditures on behalf of the national committee for convention expenses shall be made by the convention committee." Thus, the regulatory scheme precludes a national committee such as the RPUSA from ever making a direct expenditure for a publicly funded presidential nominating convention; all such expenditures must be made by the associated

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convention committee. Moreover, there is little doubt that the RPUSA established the Committee, controlled the Committee, and selected the Committee's officers.⁵ The Chair of the RPUSA had the authority to remove and replace the Committee's officers and, in fact, exercised this authority on at least two occasions. Finally, it must also be noted that in its application for public financing for its 2000 presidential nominating convention, the RPUSA expressly agreed to "pay any civil penalties included in a conciliation agreement or imposed under 2 USC 437g." Thus, the RPUSA is responsible for any violations of the Fund Act committed by its convention committee.

For these reasons, the Commission found reason to believe that the RPUSA violated 26 U.S.C. § 9008(c), 26 U.S.C. § 9012(c)(2), 11 C.F.R. § 9008.7(a), and 11 C.F.R. § 9012.3(b) as a result of the Committee's improper payment to TPG.

⁵ In its application for public financing for its 2000 presidential nominating convention, the RPUSA states, "the National Committee [of the RPUSA] has established the Reform Party 2000 Convention Committee as the convention committee responsible for conducting the day to day arrangements and operations for its 2000 presidential nominating convention and has selected Ronald Young as the convention committee chair."